

Committee of Thirteen Report

August 14, 2007

The Committee of Thirteen of the Benton County Quorum Court met Tuesday, August 14, 2007 at 5:00 P.M. in the Quorum Court Room, County Administration Building, Third Floor, 215 East Central, Bentonville, Arkansas.

13 JPs Present: Brown, Glass, Harrison, Hill, Hobbs, Hubbard, Moore, Schindler, Stephenson, Summers, Winscott, Wolf, Wozniak

Others Present: County Judge Gary Black, County Attorney Robin Green, Richard McComas, Ashley Pope, Dennis Cottrell, Wesley Lewis

Media: Jennifer Turner – Daily Record, Scarlet Simms – Morning News

Chair Tim Summers called the meeting to order.

PUBLIC COMMENTS:

Don Day stated that the Committee of 13 time change indicates that the majority of the Quorum Court members are interested in what the public has to say. He said the proposed Nuisance Abatement ordinance should be tabled in order to clear up confusion regarding what constitutes an imminent threat to health and safety, and he would like to see the makeup of the appeals board changed from 3 Justices of the Peace, because it will be nothing more than a kangaroo court. He said that although the ordinance has been around for two years, he doubts that has been given more than a couple of hours of consideration.

Jennifer McClelland stated that she was there in support of Tommy Lewis, and asked the Quorum Court to remember the poor while considering the Nuisance Abatement ordinance, because they may not be financially able to clean up or repair their cars or property.

Sue Elverston stated that the proposed nuisance abatement ordinance will pit neighbor against neighbor, be time consuming for inspectors, and does not consider the needs of the poor who cannot afford to fix up their property. She agreed health threats should be addressed, but she is concerned about people who will just look at something and not like what they see and then file a complaint.

Mark White said that property owners who pay their taxes should not be told what they can or cannot do with their property, and although there are probably some parts of the ordinance that are needed, he believes they should take more time and look at it more closely.

Tonya Lewis stated that not all Beaver Shores residents feel the same way as the Beaver Shores P.O.A., and the wording of the nuisance abatement ordinances leaves much that can be misinterpreted and misconstrued, which is why the Beaver Shores P.O.A. supports it. She said the ordinance will make enemies out of neighbors, and that junked cars, excessive vegetation and animal excrement could be considered aesthetic depending on who is writing the ordinance and the reason behind it. She said that middle-class working people do not always read the paper, so they do not know about the ordinance and there needs to be more public input.

Tommy Lewis stated that nuisance abatement ordinance is not a good thing for Benton County or he would support it, and people's opinions should not be allowed to interpret what is a safety hazard. He said there are poor people who live in houses that are not quite up to par, and there is nothing wrong with that. He added that the definition of a nuisance should be clear and defined, and they should only pass the ordinance if the majority of the people in Benton County are in favor of it.

Connie Henry stated that there is no record in any of the minutes of the Beaver Shores P.O.A. meetings of any letters being sent to some of the people who have spoken in opposition to the nuisance abatement ordinance. She said the ordinance has been discussed at board meetings in response to people complaining about cars next door to them leaking oil, and attracting rodents, snakes, and mosquitoes. She said their response has to be that they cannot do anything to help, and the county cannot do anything either. She said that people who are poor do not necessarily keep junky property. She said she feels that there has been plenty of discussion, and it is time to move forward with what is best for the people of Benton County.

Warren Phillips stated that at the last Environmental Committee meeting, the agricultural exemption had been removed, and he does not believe that State laws will allow that.

NEW BUSINESS:

1. Resolution Request: Appreciation of Daniel Oxford

JP Hill made motion to place the resolution on the August 23, 2007 Quorum Court agenda, seconded by JP Moore. JP Wozniak stated that he has worked with Daniel Oxford for several years, and when the situation arose in the Coroner's office, he stepped in without hesitation, and has kept the office together during some very trying times. JP Stephenson requested that Daniel Oxford attend the August 23, 2007 Quorum Court meeting. Motion passed by unanimous show of hands vote.

2. Resolution Request: Piney Point Volunteer Fire Department Grant

JP Winscott made motion to place the resolution on the August 23, 2007 Quorum Court agenda, seconded by JP Stephenson. JP Winscott stated that the grant is for \$15,000, and the fire department will need to raise \$23,722, \$15,000 of which it has already been pledged. He said it will allow the fire department to expand their fire station, which will result in an improved I.S.O. rating which will lower insurance costs in the area. Motion passed by unanimous show of hands vote.

3. Ordinance Request: 2007 Mid-year Adjustments

JP Stephenson made motion to place the ordinance on the August 23, 2007 Quorum Court agenda, seconded by JP Wolf. JP Summers stated that a repeater for CenCom was added after the documents were prepared for the August 7 Finance Committee meeting, but they did discuss it at the meeting. JP Summers stated that all of the adjustments have been discussed at previous meetings, with the exception of the repeater and some County Attorney's expenses.

JP Summers stated that they had previously budgeted approximately \$50,000 for Other Legal Services in the County Attorney's office, but after several years of only using about \$20,000 in that line item, they reduced the amount budgeted for 2007, and there have been several trials this year which have resulted in expenditures of approximately \$23,000. He noted that unemployment taxes are always paid by the method of paying actual costs instead of estimating a

percentage of salaries, and complimented the Accounting staff for choosing to do it that way since in results in a significant savings.

JP Hobbs made motion to amend the ordinance by removing \$21,768 from rents, seconded by JP Hubbard. JP Hobbs stated that when Travis Harp presented the information to the Finance Committee, he had said that the rent might be negotiable, and since it is her responsibility to spend the County's money wisely, she has done some research and believes that there are other properties available that would be suitable for less money. She said that she spoke with 3 realtors who expressed to her that \$13.50 per square foot was on the high side, because the market is soft and there are several empty buildings around Bentonville. She said there is 5,000 square feet available in Centerton for \$3,000 a month. She said she supports a new office for the Election Commission, but does not support locking the county into a 2-year lease that will cost \$20,000 more than the other space which will be as adequate.

Motion to amend passed 7 (Brown, Glass, Harrison, Hill, Hobbs, Hubbard, Winscott) to 5 (Moore, Schindler, Summers, Wolf, Wozniak) and 1 abstained (Stephenson).

Motion to forward the proposed appropriation ordinance as amended to the August 23, 2007 Quorum Court meeting passed by unanimous show of hands vote.

4. Ordinance Request: FEMA Flood Damage Prevention Program

JP Wozniak made motion to place the proposed ordinance on the August 23, 2007 Quorum Court agenda, seconded by JP Stephenson. JP Wozniak stated that the ordinance will allow the county to continue to participate in the Federal Flood Insurance Program and after lengthy discussion the Environmental Committee voted to leave the required elevations above the Base Flood Elevation levels at 1 foot, which is the regulation already in effect. Ashley Pope explained that the current language states that all farming operations are exempt, but that FEMA is now requiring a case by case exemption. JP Wozniak asked if it is correct that if the county does not adopt the ordinance, people living in the unincorporated areas will not be eligible for Federal Flood Insurance. Ashley Pope stated that that was correct, and that FEMA could deny the county disaster relief funds in the event of a flooding disaster.

JP Hubbard asked if there is documentation from FEMA indicating exactly what part of Benton County's ordinance they want amended. Ashley Pope stated that FEMA's directions were to coordinate with the Arkansas Natural Resources Commission, and they had provided the model ordinance.

JP Hubbard stated that he would like to see Benton County's current ordinance compared to the bare minimum changes that FEMA will require because the model ordinance seems to be regulating more than just floodplains. Ashley Pope stated that FEMA does not review each city and county ordinance; they offer one that will ensure compliance in all of the areas of flood management.

After further discussion, JP Stephenson made motion to table the proposed ordinance to the September 11, 2007 Committee of 13 meeting, requesting that all interested parties get together and get the answers to their questions satisfied, seconded by JP Hubbard. JP Hubbard stated that he only wants to meet FEMA's bare minimum standards without over-regulating. Motion passed 10 to 3 (Moore, Schindler, Summers).

5. Discussion: The Code of Ordinances of Benton County Sections 2-48 (Quorum Court Agenda) and 2-86 (Rules for Debate) – JP Debra Hobbs

JP Hobbs stated that the Code of Ordinances states that all Quorum Court agenda items are to be submitted to the County Clerk 6 days prior to the meeting date. She said that they have continued to consider items that are added to the agenda at the start of the meeting, and they should follow the procedures in the Code Book. JP Summers stated that there are times when things come up at the last minute, and since they only have one meeting per month now, he hates to see something that is not controversial held up for an extra month. JP Hobbs stated that most emergencies are due to a lack of planning. JP Wolf noted that even if the agenda has been posted, any JP is within their rights to add an item to the agenda by making a motion, and each JP can either vote for or against that motion.

The committee discussed proper procedures for discussion of ordinances. JP Hubbard requested a quarterly road report from the County Judge because the Code of Ordinances states that one will be provided. County Judge Gary Black stated that he will be happy to provide it.

OTHER BUSINESS:

JP Summers stated that St. Mary's Hospital has offered to sell the hospital along with the surrounding property for \$7 million, and has given the County 60 days to consider it. He said if they wish to enter in to this agreement, it will require \$50,000 in earnest money, which will be refunded if the county decides not to pursue the purchase for any reason. JP Schindler made motion to forward consideration of the proposal to the August 23, 2007 Quorum court meeting, seconded by JP Moore.

JP Summers stated that the County made an offer of \$6 million, and St. Mary's countered at \$7 million. JP Hubbard stated that he thought they decided to hire an outside firm to do a feasibility study at the last Quorum Court meeting. JP Summers stated that he recalled that the first step they decided to take was a needs analysis, but the availability of this property has made them fast forward the process a little bit. JP Summers added that St. Mary's will lease the building for \$98,000 per month, and pay all utilities until it is available to the county. JP Schindler suggested doing an analysis of current county property that might be available for sale if some offices are moved into the hospital building, and the rental costs that could be saved.

JP Stephenson stated that he is concerned that the agreement does not leave room for any negotiation, especially without an appraisal of the property. JP Hobbs and JP Hubbard spoke in favor of making a counter offer, and JP Hubbard stated he would like to see an additional 30 days added to the consideration period. JP Glass stated that he agreed with asking for more time in order to get a feasibility study done, and also favored asking for more time. JP Summers stated that the contract states that the county will get the \$50,000 back if they decide for any reason not to pursue the purchase, although if they hire an outside consultant for the feasibility study, that will involve spending county funds.

JP Wozniak asked how much of the complex is included in the offer. JP Summers stated that the offer includes 12 acres with 255,000 square feet in the hospital building itself. JP Winscott stated that the time period should be a minimum of 120 days, and if they agree to a price of \$7 million dollars, then that is what an appraisal will come in at. JP Winscott asked when the balance of the contract would be due, and where the money is coming from.

JP Hobbs asked why we are considering purchasing the outlying buildings. JP Summers stated that the county offered \$6 million for the entire 12 acres, and St. Mary's counter offer was for \$7 million. He added that they will lease the building from the county for \$98,000 per month until

they move into their new facility. JP Hobbs asked if St. Mary's would consider selling only the hospital building. JP Stephenson asked how they are considering financing the purchase. JP Summers stated that they are looking at several options, but would like to reach a decision on the merits of the purchase before getting into them.

JP Glass stated that they have no idea if the building will work, and would like to have seen the information on needs that was requested at the last meeting before an offer was made. JP Summers stated that an offer has not been made; that will require action by the Quorum Court, and the purpose of this discussion is to determine if they want to even consider it. JP Glass said that other buildings have come to their attention that might suit the JDC's needs better, and the rents that would be saved from the other departments moving into the hospital is not that significant, only about \$240,000 per year. JP Summers asked what other buildings are possibilities for the JDC. JP Glass stated that there is a Baptist Church in Rogers that will be empty soon.

JP Hobbs asked if the county will get the \$50,000 back if they decide for any reason not to pursue the purchase. County Attorney Robin Green stated that was correct. JP Hobbs stated that she felt it was a good idea to pursue the possibility as long as they would not lose any money, and to continue gathering information about our needs and the feasibility study of the renovation costs.

JP Moore stated that he would like to see a formal appraisal to see how much the building is worth, and was in favor of making another counter offer of \$6.5 million. JP Winscott stated that he would need to see a lot more information before he would support committing \$50,000 to the building. JP Stephenson stated that the offer should state that the sale price will be the lesser of \$7 million or the appraisal price. JP Glass stated that he agreed that they should make a counter offer, but he does not want to get tied up with appraisals, because once a sale price is established, the appraisal comes in at that price. He said he is more concerned that they get an accurate estimate of what the renovations will cost to make it suitable for the JDC.

JP Wolf stated that they are not putting any money at risk, and that there is probably a current appraisal on file somewhere. She added that if they are going to make a counter offer, then the committee needs to state what that offer will be.

JP Hubbard stated that we are getting ahead of ourselves, because we do not have a clue what our needs are. He asked what action needs to be taken tonight. JP Summers stated that they needed to decide what they want to do concerning the \$50,000, and added that if they decide to seriously consider it, he wanted them to be aware that they will have to spend some money on a feasibility study.

The committee discussed at what point a different purchase price could be negotiated after it is determined if the building fits the county's needs.

JP Stephenson made a friendly amendment to the motion to extend the consideration period to 90 days, and to obtain an appraisal, seconded by JP Glass.

JP Hubbard asked what will be required to get out of the contract, because he would not let someone just change their minds if they had already put down earnest money. County Attorney Robin Green explained that all of the county's contracts contain a "non-appropriation" clause, which means that if the Quorum Court does not vote to fund something, the contract is voided, and that the county can simply change their minds and get the \$50,000 back. JP Hobbs stated that she does not want to pay for the appraisal. JP Stephenson stated that we do not want someone else paying for it. JP Summers stated that he believes there is an appraisal already

done. JP Stephenson stated that it might be acceptable, depending upon who performed it and when.

JP Summers repeated the motion as amended, stating that they are putting down \$50,000 earnest money for a period of 90 days, and if the existing appraisal is not acceptable, they will obtain one that is. JP Hobbs asked if that meant that they are committing to paying for an appraisal, and if we know how much it will cost. She added that she did not think the property would have any difficulty appraising for the asking price, but the more important issue is the market value to Benton County and whether or not it will fill our needs for a price we can afford. JP Summers stated that it is safe to say that if it works for us, it is a good buy, and if it does not work, then it does not work. JP Brown stated that the building is worth whatever a buyer will pay for it, and when you compare our needs versus what it is going to cost to meet those needs, it is a good deal.

JP Summers stated that they may need to have an additional Committee of Thirteen meeting in August to discuss this further.

JP Moore stated he believes this building will make it possible to fill the county's needs without having to go to the citizens for a tax increase.

The committee discussed whether or not they are approving payment for an appraisal if one is not available.

JP Hobbs made motion to amend the main motion to state that if an appraisal is not available and the county has to pay for one, then the issue will come back to the Quorum Court for a vote before the appraisal is ordered, seconded by JP Stephenson. Amendment to the motion passed 11 votes for, 2 against.

Motion to forward the proposal to put down \$50,000 earnest money for 90 days passed, 12 votes in favor, 1 opposed (Winscott)

County Judge Gary Black was recognized and asked if the feasibility study they are requesting is for 5 years, 10 years, or just consideration of the St. Mary's facility. He said he has requested information from Washington County Judge Jerry Hutton on a firm that they have hired to do a long term feasibility study for \$95,000, but it is going to take 6 to 8 months. He said that they need a lot of information more quickly than they had anticipated since the St. Mary's situation has just popped up, and stated that everyone is going to have to chip in so they can get all the information that is needed in time to make a decision. He said that he feels like this is a good deal for the county, and St. Mary's officials have bent over backwards to help us. He said there are so many questions that the process will work better if they are all involved. He said the need for a new JDC is immediate, as well as a new courtroom space, and this is the way to get both of those problems solved. He said he thinks the building is worth \$7 million, and he sees no point in making a counter offer. JP Hubbard expressed concern about the remodeling expense, and that hospitals are hardly ever remodeled into anything else because it is cheaper to tear them down. County Judge Gary Black stated that they have no idea what the remodeling costs will be, and that is the purpose of the assignments he is making—to determine those.

County Judge Gary Black commented on the office space for the Election Commission, stating that both the Long Range Planning/Properties & Equipment Committee and Finance Committee had instructed them to find a suitable location for the offices, they listened to the Election Commission, and felt they had accomplished what was asked for a fair price. He added that time was of the essence, because they need to move while they are not busy with elections. He said

they were not presented with any alternatives while they were out looking, and they chose the facility, and the rest of the Quorum Court may not be familiar with all of those needs.

JP Hubbard stated that he did not think the request for the JPs to gather information was very realistic, because the Quorum Court does not have the expertise that is needed to make those determinations, and they need to be hiring an outside consultant for that.

JP Glass	Coordinator, Zoning, Legal Issues with County Attorney
JP Winscott	Physical Plant – Hospital Building
JP Harrison	Utilities
JP Hobbs	Juvenile Detention Center
JP Brown	Future Uses of the Facility
JP Summers	Finance
JP Hill	Election Commission
JP Schindler	Drug Court and Juvenile Probation
JP Hubbard	Possible Uses for Outlying Buildings and Grounds
JP Stephenson	Personnel, Maintenance, Grounds keeping
JP Moore	Health Department

The committee discussed how the JPs can legally communicate with each other. County Attorney Robin Green stated that the Freedom of Information Act still applies, and if they need to contact each other they will need to also notify the media. JP Summers stated that they will probably start meeting every two weeks on this issue.

ANNOUNCEMENTS:

JP Summers announced that the Quorum Court will meet on August 23, 2007 at 5:00 p.m., the Finance Committee will meet on September 4, 2007 at 2:30 p.m., and the Committee of Thirteen will meet on September 11, 2007 at 6:00 p.m.

JP Moore announced that the Long Range Planning/Properties and Equipment Committee will meet on Tuesday, August 21, 2007 at 5:30 p.m.

After motion and second the meeting was adjourned at 7:00 p.m.